



2025:DHC:1362



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 24<sup>th</sup> January, 2025.  
Pronounced on: 27<sup>th</sup> February, 2025.*

+ **CS(COMM) 489/2022**

MR. ANIL PITTI

.....Plaintiff

Through: Mr. Kushagra Bansal, Advocate.

versus

APEEJAY OVERSEAS LTD. & ORS

.....Defendants

Through: Mr. Kartik Khanna, Advocate for D-1  
& D-2.

**CORAM:  
HON'BLE MR. JUSTICE ANISH DAYAL**

### **JUDGMENT**

#### **ANISH DAYAL**

#### **I.A. 1968/2024 in CS(COMM) 489/2022**

1. This application has been filed on behalf of plaintiff under Order XIII-A of the Code of Civil Procedure ('CPC') for seeking summary judgment.
2. Summons were issued by order dated 16<sup>th</sup> September 2022 and defendant nos. 1 and 2 had filed their written statements on 16<sup>th</sup> June 2023. By order dated 13<sup>th</sup> July 2023, the rights of defendant nos. 3 and 4 to file written statements and affidavit of admission/denial of documents, stood closed.
3. The suit has been filed by plaintiff for seeking decree of specific performance in respect of Agreement dated 4<sup>th</sup> August 2021, thereby directing



defendants to deliver the total quantity of 2500 MT for coal type ‘USA High GCV Coal Grade-A’ at the rate of INR 11,350/-, as per the terms and conditions contained in the agreement.

4. Plaintiff company is engaged in the trade of refined petroleum products and other allied products, running its firm by the name of ‘M/s Pitti Coal Company’. Defendant no.1 is engaged in trading of energy and fuels and a flagship company of *Arham International Group* known as ‘M/s Apeejay Overseas Ltd’. Defendant No. 2 is one of the directors of defendant no.1 company and defendant no.3 is the sales manager of defendant no.1 company. Defendant no.4 is an online platform for coal suppliers and coal buyers to connect.

5. Plaintiff and defendant no.1 were registered on the portal of defendant no.4. An agreement dated 4<sup>th</sup> August 2021 was entered into between plaintiff and defendant no.1, whereby defendant no.1 agreed to sell the coal as per agreed terms and conditions. Subsequently, plaintiff’s company made a payment of Rs. 28,37,500/- in favour of defendant no.1 as being 10% EMD of total agreement value on 4<sup>th</sup> August 2021. Defendants, however, failed to supply the coal to plaintiff. Plaintiff issued a legal notice on 31<sup>st</sup> March 2022, which was duly served upon defendants, but there was no reply.

6. Counsel for plaintiff submits that after making the payment of EMD amount, plaintiff continuously approached defendants regarding the lifting of coal from the vessel, however, there was no positive response from defendants and defendants failed to deliver the coal as per the agreed terms and conditions.



7. He further submits that defendants pleaded that they were not bound to refund the amount as the same was forfeited basis NOC dated 2<sup>nd</sup> December 2021 by which plaintiff had cancelled the deal. Plaintiff ultimately filed a criminal complaint against defendants, dated 12<sup>th</sup> October 2021 to SHO, PS Vivek Vihar to which defendants, in order to settle the matter, got ready to refund the EMD amount, but sought NOC from plaintiff regarding confirmation of withdrawal of police complaint before refunding the same.

8. Counsel for plaintiff submits that the written statements filed by defendant nos. 1 and 2 admit the execution of the agreement dated 4<sup>th</sup> August 2021 and further acknowledge the receipt of Rs. 28,37,500/-. Defendants admit the execution of the agreement, payment *qua* EMD amount and there is no evidence which shows that defendants had ever intended to deliver the products to plaintiff. After execution of agreement, prices of coal had risen at exponential rates and defendants unlawfully withheld the delivery of the coal with the sole motive to make more money.

9. Counsel for plaintiff also submits that defendants did not file a counter-claim and have no plausible defence to succeed in the suit as plaintiff made the payment to defendants, which was acknowledged by them and furthermore, defendants failed to abide by the terms and conditions of agreement dated 4<sup>th</sup> August 2021, therefore, there is no plausible defense for defendants to succeed and suit is liable to be decreed under Order XIII A of CPC.

10. To this, counsel for defendants countered by submitting that there was no agreement between the parties. Plaintiff was requested several times to



make balance payment amount of 90% for the order completion, but plaintiff expressed his willingness to cancel the deal and issued a NOC *via* email dated 2<sup>nd</sup> December 2021, by which amount of EMD was forfeited and the same was informed to plaintiff and was agreed upon.

### *Analysis*

**11.** The suit of plaintiff is based on a Coal Supply Agreement by defendant no.1 to plaintiff. Plaintiff is engaged in the trade of Refined Petroleum Products and is running its firm in the name of *M/s Pitti Coal Company* since 2017, with a turnover of about Rs. 100 crores since the last three years.

**12.** Defendant no.1 is a flagship company of *Arham International Group* and is engaged in trading of energy and fuels, being one of the leading traders of fuel in North India. Defendant no. 2 is the Director of defendant no.1 and defendant no. 3 is the Sales Manager. Defendant no. 4 is an online platform for coal suppliers and coal buyers to connect and optimize the coal trading process.

**13.** Defendant nos. 1 & 2 submitted their written statements. Defendant nos. 3 & 4 did not file their written statements and, therefore, their right stood closed by order of this Court dated 13<sup>th</sup> July 2023.

**14.** Defendant no.1 registered themselves on the online portal of defendant no. 4 for trading of coal through online mode and a user ID was provided to plaintiff's firm for them to indulge in sale and purchase of coal.

**15.** Defendant no.1 had imported high grade value coal from USA & placed its offer to sell its imported coal on the online portal of defendant no. 4. The plaintiff firm was in need and, therefore, submitted a bid. Defendant



2025:DHC:1362



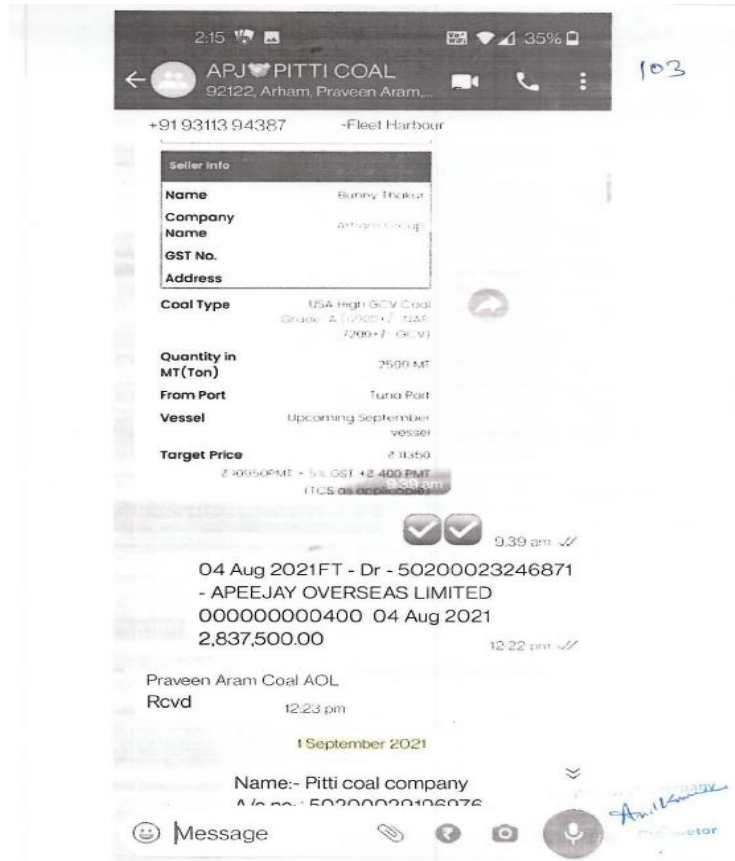
no.4/online portal made the match of plaintiff's demand with defendant no.1's supply and agreement dated 04<sup>th</sup> August 2021 was entered into. Notably, this aspect is not denied, as evident from *para 12* of the plaint and that of the written statement.

**16.** Though, defendant no.1 claims that there was no written agreement, plaintiff had asserted in its application that due to online training, the agreement was shared with them, as is evident from the *WhatsApp* chat at *page 103* of plaintiff's documents. A perusal of the said chats would show that the exchange of communication seems to be in the regular course of trade and has not been denied by defendant no.1, with due details of the supply quantity.

**17.** A snapshot of the initial *WhatsApp* chat, evidencing the agreement, is extracted as under:



2025:DHC:1362





2025:DHC:1362



**18.** The agreement was to sell a total quantity of 2500 MT of coal type ‘USA High GCV Coal Grade-A’ at the rate of Rs. 11,350/- PMT. Plaintiff made a payment of Rs. 28,37,500/- being 10% EMD of the total agreement value. The written statement of defendant nos. 1 & 2 confirms that they received this payment for this purchase and, therefore, made arrangements for supply.



**19.** While plaintiff states that they were willing to purchase the said coal as per the terms and conditions and asked for confirmed dates of the delivery, stating that they were ready to send their trucks for lifting of the coal and also shared vehicle numbers with driver details, but defendants failed to perform their part of the contract. There are bald denials in the written statement of defendants, regarding the assertions made in *paras 16-18* in this regard, by plaintiff.

**20.** The only assertion which defendant no.1 makes in the affirmative is that they had requested the plaintiff to pay the balance amount of 90% for the order completion but he never came through with the said payment and later plaintiff cancelled the deal and issued a NOC *via* e-mail dated 02<sup>nd</sup> December 2021 as per which the EMD was forfeited. This was denied in the replication by plaintiff.

**21.** What needs to be seen in this application under Order XIII-A of CPC is that plaintiff simply claims the refund of the EMD, while the rest of the damages would be subject to trial. Considering this was a cash and carry nature of transaction, the communication exchanged between the parties would bear out the authenticity of their respective stances.

**22.** The *WhatsApp* chat dated 27<sup>th</sup> September 2021 shows a message from plaintiff stating that “*Praveen ji waiting sir mujhe batao gadiya kahan bhejni hai. Meri gadiya loading par lagi hai. Please reply fast*” to which defendant replied “*Sir abhi confirmation nahi hua hai aaj ki loading ke liye.*” The plaintiff responded to this stating “*Bhaiya kal ke liye aap do ready rakhna*”



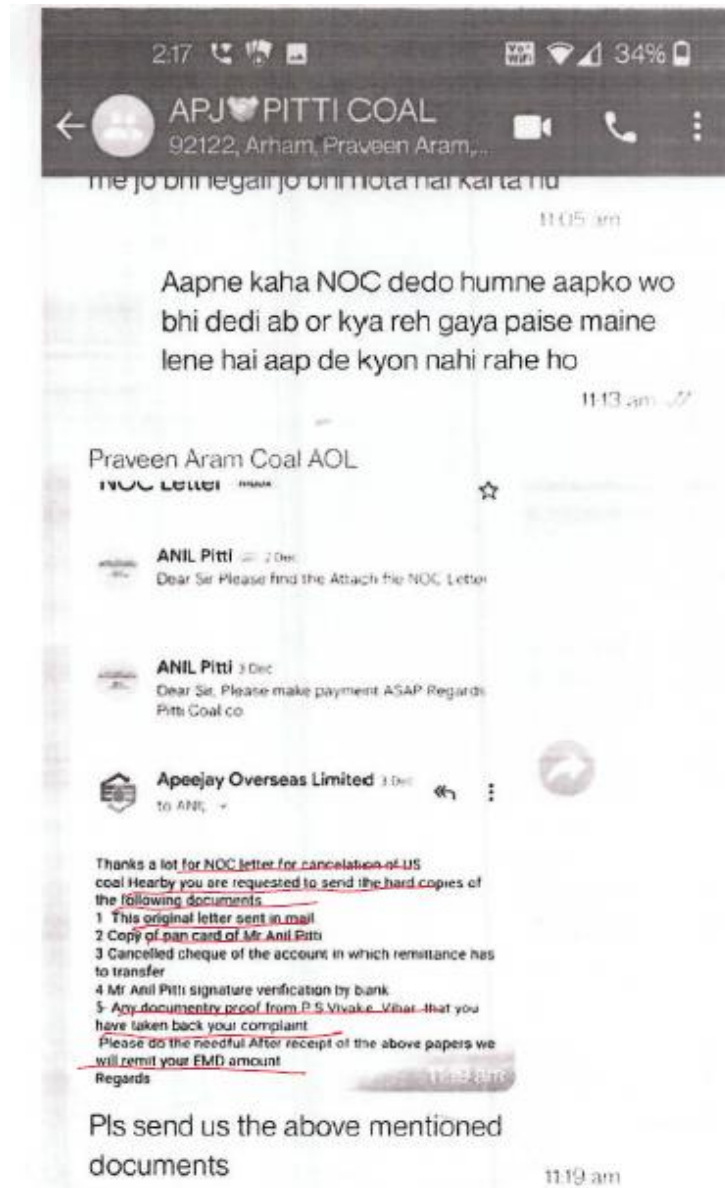
*nahi to muje bahut problem ho jayegi. Kal subah main gadi bhejni chalu kar dunga.”*

**23.** On 29<sup>th</sup> September 2021 at 11:24 AM, a message was sent by plaintiff that “@Praveen Aram Coal AOL sir 4-5 din ho gaye appki taraf se koi response nahi aa raha hai mujhe coal lift karna hai. Bahut pareshani ho rahi hai.”

**24.** At 12:47 PM, plaintiff while stating “Meri gadiya khadi hai bhaiya”, also sent the name of the driver and car details being “RJ06GC7474, Driver name- Bhagchand Jat, Mob. No. 9602808213” to which defendant no. 1 replied at 12:57 PM that “Sir abhi material ke liye aage se confirm nahi hua hai.”

**25.** Similar nature of conversations continued right through October. In a message on 05<sup>th</sup> October 2021, plaintiff states that “Bhaiya kya hua loading ka. Loading no. dedo aaj loading karani hai. @ Arham Jain Coal aap message seen kar rahe ho but koi reply nahi de rahe.”

**26.** Considering that the transaction had fallen through and no supply was made, a communication was sent by Apeejay Overseas Ltd. (defendant no.1), which was forwarded by Mr. Praveen (defendant no. 3/Sales Manager), extracted as under:



27. These communications which were exchanged between Mr. Anil Pitti and defendant no.3/Praveen Kumar have not been denied, considering that Mr. Praveen Kumar has not filed his written statement, as his right to file the written statement stood closed by order dated 13<sup>th</sup> July 2023.



28. The defendant's case is only that plaintiff issued a NOC *via* email dated 02<sup>nd</sup> December 2021 and as per agreed terms, the amount paid towards the EMD was forfeited.

29. A perusal of the NOC, which has been filed by defendants, would show that the plaintiff only stated that they will not make a legal case of recovery of any amount with regards to the transaction, since defendant no.1 had made a counter deal with *M/s Simplex Coke and Refractory Private Limited*.

30. The reliance on this NOC may not be relevant, considering the communication by defendant no.1 stating that after receiving the NOC, they would remit back the EMD amount, as has been extracted above.

31. Written statement of defendant nos.1 and 2 in *para 4(c)* is an admission by defendants that they received payment of Rs. 28,37,500/- as EMD for total purchase order. The same is extracted as under:

*“c) That on 04.08.2021 the answering defendants received a payment of Rs. 28,37,500/- as EMD for a total purchase order of 2500 MT coal at the rate of Rs. 11,350/- per ton and pursuant upon receiving the said order the answering defendants made further arrangements and made further payments to the vendors as required in the normal course of business.”*

32. However, defendants had averred that plaintiff had failed to pay the balance amount of 90% of the total contract value, despite various requests made by them. Defendants have failed to file a single document to substantiate the same. Several *WhatsApp* messages have been appended by plaintiff showing communication from plaintiff to defendants inquiring about



the status of lifting of coal, but there was no response by defendants to the same.

33. There is no communication on record to show that defendants had communicated to plaintiff, regarding forfeiting of the EMD amount.

34. Having heard the submissions of parties and perused the documentation referred to above, this Court is of the opinion that there is a clear admission by defendant that the EMD was to be returned, despite the NOC being there. There is no communication to the contrary between the parties. Defendant has also not been able to state that the said supply was indeed made to plaintiff.

35. In this regard, considering that the supply was not made to plaintiff, despite the agreement between the parties and no transaction fructified on account of the transaction agreed to, defendant must refund the EMD to plaintiff.

36. The whole purpose of Order XIII-A of CPC is to give a summary judgment, if defendant has no prospect of successfully defending the claim.

37. The following judgments are relevant for analyzing the scope of Order XIII-A of CPC:

- I. The Division Bench of this Court in *Takshashila Hotels (P) Ltd. v Mohd. Ilyas* 2025 SCC OnLine Del 789 while analyzing the scope of Order XIII-A Rule 3 of CPC held as under:

*“31. The extracted provision of Order XIII-A of CPC has been introduced through the Commercial Courts, Commercial Division, and Commercial Appellate Division of High Courts Act, 2015. It prescribes the procedure by which the Courts may adjudicate claims*



arising from a “Commercial Dispute” without the necessity of recording oral evidence...”

32. Under Order XIII-A Rule 3 of the CPC, the Court is empowered to pass a Summary Judgment in favour of either of the parties if it is evident that the opposing party has no real prospect of succeeding on the claim or defending against it, respectively...”

(emphasis added)

- II. A Coordinate Bench of this Court in **Rohit Malhotra v Gurvinder Singh Toor** 2024 SCC OnLine Del 4595 held as under:

*“52. Thus, it can be deduced that there majorly exist two grounds to grant a Summary Judgment: —*

- a) Absence of any prospect for the Defendant to successfully defend a claim raised by the Plaintiff; and*  
*b) Absence of a compelling reason for this Hon'ble Court to decide the dispute before recording of oral evidence of the parties.”*

(emphasis added)

- III. In **Su-Kam Power Systems Ltd. v Kunwer Sachdev** 2019 SCC OnLine Del 10764 a Coordinate Bench of this Court held that Order XIII A of CPC seeks to avoid the long-drawn process of leading oral evidence in certain eventualities, the relevant paragraphs of which are extracted as under:

*“40. Amended Order XIII A of CPC, as applicable to commercial disputes, enables the Court to decide a claim or part thereof without recording oral evidence. Order XIII A of CPC seeks to avoid the long drawn process of leading oral evidence in certain eventualities. Consequently, the said provision enables disposal of commercial disputes in a time bound*



*manner and promotes the object of the Commercial Courts Act, 2015.*

*41. Rule 3 of Order XIII-A of CPC empowers the Court to grant a summary judgment against a defendant where on an application filed in that regard, the Court considers that the defendant has no real prospect of successfully defending a claim, and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. Order XIII A (3) of CPC, as applicable to commercial disputes, is reproduced herein below:—*

*“3. Grounds for summary judgment.—The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that-*

*(a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and*

*(b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.”*

(emphasis added)

**38.** In the present case, nothing has been brought out by defendant constructively or categorically, in order to controvert the issue of the refund of the EMD.

**39.** In the opinion of this Court, the defendant has no real prospect of defending the claim and there is no compelling reason by why this part of claim be not dispensed of before recording of evidence.

**40.** Accordingly, this application under Order XIII-A of CPC is, therefore, allowed to the extent that the EMD amount of Rs. 28,37,500/- be returned to



2025:DHC:1362



plaintiff, along with 18% interest per annum calculated from the time of the filing of the suit till the date of payment, within a period of three weeks from today.

**41.** As regards the other relief *inter alia* decree sought for recovery of Rs. 2,01,25,000/- along with compensation of Rs. 1 crore against reputational loss, the matter will go to trial, since plaintiff would have to prove the compensation/damages in this regard.

**42.** Judgment be uploaded on the website of this Court.

**(ANISH DAYAL)  
JUDGE**

**FEBRUARY 27, 2025/RK/na**